

AG Contract No. KR02-2021TRN  
ADOT ECS File No. 02-107  
Project No.: S 085-B-303  
TRACS No.: S 085 MA 137 H5955 02D  
Section: State Route 85  
Lewis Traffic Interchange  
5-Year Program No.: 70403

## AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE NATURE CONSERVANCY

THIS AGREEMENT is entered into 10th July, 2003, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE NATURE CONSERVANCY, acting by and through its Arizona Chapter, ("The Nature Conservancy")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Nature Conservancy is authorized by its Board of Governors to enter into this agreement, and has authorized the undersigned to execute this agreement on behalf of the Nature Conservancy.

3. Incident to a roadway improvement project on State Route (SR)85 between milepost (MP) 137.0 (+/-) and MP 139.5 (+/-) contemplated by the State, a portion of the work will impact lands owned, controlled or under the jurisdiction of the US Army Corps of Engineers (USACE). The USACE requires mitigation of the project area lands by replacing habitat. To meet that requirement, the State and The Nature Conservancy desire to participate in the acquisition, enhancement, restoration, preservation, management, and maintenance of land suitable for the habitat replacement, along the Hassayampa River Preserve, at a total cost of \$17,500 00, all at State expense.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 26174  
Filed with the Secretary of State  
Date Filed: 07/10/03  
Janice K. Brewer  
Secretary of State

By: Vicky J. Graenewald

## **II. SCOPE OF WORK**

1. The Nature Conservancy will:

a. Upon execution of this agreement, invoice the State for the cost of the mitigation effort, an in-lieu fee of \$17,500.00.

b. Dedicate this in-lieu fee payment for land acquisition, or habitat preservation or enhancement purposes, along the Hassayampa River Preserve.

2. The State will:

a. Within thirty days after receipt and approval of an invoice, pay The Nature Conservancy the in-lieu fee of \$17,500.000 as the total cost of the mitigation effort.

b. Upon completion of the payment process, through its Environmental & Enhancement Group, provide a copy of the invoice and payment voucher to the USACE (Permit # 2002-00682-CJL), to document the successful transfer of in-lieu mitigation fees.

## **III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of said payment, provided; however, that this agreement may be cancelled at any time prior to the commencement of performance and any payment under this agreement, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon signature and date by the parties hereto.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of state employees.

4. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract.

5. In the event of any controversy that may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX: 602-712-7424

The Nature Conservancy  
Arizona Chapter  
Director of Conservation  
1510 East Ft. Lowell Road  
Tucson, AZ 85719  
FAX: 520-620-1799

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**THE NATURE CONSERVANCY  
ARIZONA CHAPTER**

By Thomas P. Collazo  
THOMAS P. COLLAZO  
Director of Conservation

June 17, 2003  
DATE

**STATE OF ARIZONA  
Department of Transportation**

By Susan Tellez  
SUSAN TELLEZ  
Contract Administrator

6-23-03  
DATE

G:02-107-SPM-Nature Conservancy  
02June2003-lg-revised  
03Jun2003-jw assigned  
09June2003

APPROVAL OF THE NATURE CONSERVANCY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION and the NATURE CONSERVANCY and declare this agreement to be in proper form and within the powers and authority granted to the NATURE CONSERVANCY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 2nd day of July, 2003.

Andrew S. Hamano

Attorney

ATTACHMENT A

DEPARTMENT OF THE ARMY PERMIT

**Permittee:**

William Alfier  
District Engineer, Yuma District  
Arizona Department of Transportation  
2243 E. Gila Ridge Rd. (MDY 200)  
Yuma, Arizona 85365

Permit Number ~~2002-00682-CJL~~ 7

Issuing Office: Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The Arizona Department of Transportation (ADOT) and the Federal Highway Administration (FHWA) are proposing to widen State Route (SR) 85 between milepost (MP) 137.0 to MP 139.5 near the Lewis Prison. The project scope consists of constructing a four-lane divided roadway with ramps and frontage roads, providing access to Lewis Prison Road, Patterson Road, and the Juvenile Detention Facility. Specific roadway features include two primary roads (north and southbound SR 85 plus four ramps), west and east frontage roads, two bridges crossing SR 85 over Lewis Prison Road, and a new section of Patterson Road. The western terminus of Lewis Prison Road will be realigned 250 feet to the south, to allow Lewis Prison Road to better align with the new SR 85 roadway. The existing Lewis Prison Road, a large portion of the existing SR 85 roadway, and a small portion of Patterson Road will be demolished. Traffic using Patterson Road will be redirected down the west frontage road to Lewis Prison Road, where they will be able to access the freeway, the prison, or the juvenile facility. A small portion of the existing SR 85 roadway will be converted into a frontage road linking the new alignment of Lewis Prison Road with the Juvenile Detention Facility. Roadway construction will include the installation of new culverts, the extension of existing culverts, and the construction of a drainage channel, new catch

basins, and headwalls.

The washes within the project area are ephemeral and gently slope toward the Gila River. The project area contains approximately 15.8 acres of jurisdictional Waters of the United States. The proposed project will permanently impact 2.3 acres of Waters of the United States. Construction access will temporarily impact an additional 1.9 acres of Waters of the United States. Where possible, natural flows will be maintained by the use of new and existing culverts. Some re-routing of Waters of the United States will be required and a new drainage channel will be constructed to direct this flow back into downstream tributaries to the Gila River. These drainage features will be designed to safely move storm flow events up to the 100-year event through the project area. Specific construction activities that will permanently impact jurisdictional washes include: the installation of two metal pipe culverts; the extension of nine existing metal pipe culverts; the installation of ten concrete box culverts (serving three wash crossings); the construction of 1.1 acre of new drainage channel, and the construction of new catch basins and headwalls.

The project will be constructed in three phases to allow SR 85 to remain open to traffic during the construction period. Construction activities will require the use of heavy equipment within the identified project area. The contractor's storage yard will be located at least 100 feet outside of jurisdictional waters not affected by this project. If an on-site batch plant is used for the production of asphaltic concrete, it will be located at least 100 feet outside of Waters of the United States not being impacted by the proposed project. Temporary fencing will be installed around a petroglyph site prior to commencement of construction activities adjacent to this site. Utilities will be relocated before the start of construction activities. The utility companies will be responsible for compliance with any 404 or 401 permit conditions for activities related to relocation of their equipment.

**Project Location:** The Lewis Prison TI project is located on SR 85 from mileposts (MP) 137.0 to 139.5 and is about 20 miles north of Gila Bend crossing various unnamed washes at (Sections 2, 3, 10 and 11 of T3S, R4W and Section 35 of T2S, R4W), in Maricopa County, Arizona.

## **Permit Conditions**

### **General Conditions:**

1. The time limit for completing the authorized activity ends on November 30, 2005. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

**Special Conditions:** See attached sheet.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- ( ) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).
- ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

William P. Alfrey  
(PERMITTEE) District Engineer

8/5/02  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Cindy Leses  
Mark F. Sudol, D.Env.  
Chief, Regulatory Branch  
(for the District Engineer)

8/16/02  
(DATE)

When the structures or work authorized by this permit are still in existence at the

time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEEEE)

\_\_\_\_\_  
(DATE)

**SPECIAL CONDITIONS**  
**PERMIT NO. 2002-00682-CJL**

1. The permittee shall comply with all requirements and conditions in the letter of state water quality certification that the Arizona Department of Environmental Quality signed on June 7, 2002. This certification demonstrates that the permittee has complied with Section 401(a) of the Clean Water Act. A copy of this letter is enclosed.
2. The permittee shall mitigate for the loss of 2.3 acres in waters of the United States associated with the roadway and drainage activities for the SR85 project. The permittee has agreed to perform off-site mitigation through an in-lieu fee payment in the amount of \$17,500. The permittee shall make the check payment payable to the Tucson Conservation Center of The Nature Conservancy (TNC) and state in the subject line that it is for Section 404 mitigation requirements regarding the SR85 project (#2002-00682). The TNC has agreed to dedicate this in-lieu fee payment for land acquisition or habitat enhancement along the Hassayampa River Preserve. The permittee shall provide the Corps with copies of the check and transmittal letter to document the successful transfer of the mitigation funds, by December 31, 2002.
3. The permittee shall provide notification, either written or verbal, to the Corps of Engineers at least one week prior to the start of work, as to the anticipated beginning and ending dates of construction. The permittee shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit.
4. A copy of the permit shall be on the job site at all times during construction. The permittee shall provide a copy of this permit to all contractor(s), subcontractor(s), foreperson(s), and construction representatives. The permittee shall require that all contractor(s), subcontractor(s), foreperson(s), and construction representatives read this authorization in its entirety and acknowledge they understand its contents and their responsibility to ensure compliance with all general and special conditions contained herein. A copy of these instructions will be provided to the Corps prior to construction.
5. In the event that previously unidentified cultural resources (historic, archaeological, or human remains) are encountered while conducting activities authorized by this permit, the permittee shall immediately cease work in the area of discovery, take all reasonable steps to secure the preservation of those resources, and immediately notify this office and the Director of the Arizona State Museum, pursuant to A.R.S. 41-865.
6. The permittee shall ensure that all project areas disturbed by construction-related activities (within waters and uplands) are stabilized, and reseeded with a locally native plant species, and restored to their pre-project conditions/contours, to the maximum extent possible, upon project completion. Watercourse morphology shall be re-established to match pre-construction configurations.
7. The construction limits for all work within waters of the U.S. shall be staked or flagged prior to construction. The contractor(s) shall be thoroughly familiar with each of the project boundaries, and all perimeter markings shall be maintained intact for the life of the project. The contractor shall monitor each of the construction zones during the entire length of the contract to ensure fencing remains in place and that no vegetation is disturbed outside of the

construction limits.

8. Temporary construction access, staging activities, and stockpiling of construction materials shall be located outside of the waters of the U.S. The location of these activities shall be sited to minimize the removal of mature trees, to utilize previously disturbed areas to the extent practicable, and to minimize the total area of disturbance. The permittee shall immediately remove all excavated material to an upland disposal site.
9. The permittee shall not discharge dredged or fill material (other than "incidental fallback" of dredged material) while constructing this project or any other phase of this project, other than the permitted activities identified above.
10. The permittee shall allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished within the terms and conditions of the permit.

## SECTION 404 INDIVIDUAL PERMIT Conceptual Mitigation Plan

Arizona Department of Transportation  
Lewis Prison Traffic Interchange

### PROJECT PURPOSE & NEED

State Route (SR) 85 is a part of a critical link between Interstate 8 and Interstate 10 in south central Arizona. The SR 85 corridor is the only non-Interstate portion of the principal route linking Phoenix with the Towns of Buckeye, Gila Bend, and Yuma. Both commercial and non-commercial vehicles traveling between Phoenix and San Diego use the SR 85 corridor. SR 85 is one of the most heavily traveled two-lane rural highways in Arizona, with traffic between Buckeye and Gila Bend projected to increase significantly over the next twenty-two years. The purpose of the Lewis Prison Traffic Interchange (T.I.) construction project is to provide grade separation for traffic passing through on SR 85 and traffic stopping at the Lewis Prison and the adjacent juvenile detention facility. Currently, the section of SR 85 fronting the Lewis Prison Facility is experiencing higher than projected levels of vehicle use, which has caused a loss in the level of service. This situation has led to a high number of vehicular accidents in this location. These accidents can be attributed to driver error, vehicular failure, environmental factors such as weather, and roadway deficiencies.

The area served by the interchange is a rapidly growing rural area with traffic demands that can no longer be accommodated by the existing facility. The new T.I. will better accommodate the current and future traffic volumes and provide the area with greater roadway safety and reliability.

### PROJECT SUMMARY

The Arizona Department of Transportation (ADOT) is proposing to construct the Lewis Prison T.I. from milepost (MP) 137.0 north to MP 139 on SR 85, approximately 29 miles north of the City of Gila Bend, Maricopa County, Arizona. The legal description of the project is Township 2 South, Range 4 West, Section 35 and Township 3 South, Range 4 West, Sections 11, 10, 3 & 2 (USGS 7.5' Topographic Map: Cotton Center NW).

The proposed project scope consists of constructing a four-lane divided roadway with ramps and frontage roads providing access to Lewis Prison Road, Patterson Road, and the juvenile detention facility. The western terminus of Lewis Prison Road is being realigned 250 feet to the south, to allow Lewis Prison Road to better align with the new SR 85 roadways. The existing Lewis Prison Road will be demolished as will a large portion of the existing SR 85 roadway and a small portion of Patterson Road. Traffic using Patterson Road will be redirected down the west frontage road to Lewis Prison Road, where it will be able to access the freeway, the prison, or the juvenile detention facility.

A small portion of the existing SR 85 roadway will be converted into a frontage road linking the new alignment of Lewis Prison Road with the juvenile detention facility.

Impacts to Jurisdictional Waters of the United States (JDW) are directly attributable to the amount of material needed as fill to provide correct horizontal and vertical alignments (i.e. roadway geometry) for the proposed T.I. The project includes construction of two primary roads (north and southbound SR 85, four ramps (A, B, C & D), west and east frontage roads, two bridges crossing SR 85 over Lewis Prison Road, and a new section of Patterson Road. Construction of these roadways will include the installation of 2 metal pipe culverts and the extension of 9 existing metal pipe culverts, installation of 10 concrete box culverts (serving 3 wash crossings) and installation of a 48,385.8 square foot (1.1 acres) drainage channel, which will direct storm flow waters into a tributary of the Gila River, and new catch basins and headwalls. Additional construction activities consist of roadway excavation; placement of borrow materials; furnishing and placing aggregate base course; asphaltic concrete and asphaltic concrete friction course; constructing two bridges spanning Lewis Prison Road; installing fencing and gates; installing roadway signs and stripes; constructing guardrail, cable and concrete barriers; seeding and other incidental work. This project will require the acquisition of additional right-of-way.

## IMPACTS ASSOCIATED WITH PROPOSED ACTIVITY

### Overview

The project area contains approximately 15.8 acres of JDW. Of those 15.8 acres, 4.2 acres will be impacted; 2.3 permanently and 1.9 temporarily. The project design calls for the construction of 1.1 acres of a new drainage channel, which will partially mitigate for the loss of JDW on the project site.

An evaluation of the impacted washes by the proposed construction activities is found below:

**Table 1. Existing Functions and Values of Impacted Washes within the Project Area**

<b>FUNCTION</b>	<b>VALUE</b>	<b>RATIONALE</b>
<i>Water Quality</i>		
Groundwater Recharge/Discharge	Low	Fine to Course substrate, no real or holding of water. Storm flow quickly moves to the Gila River.
Nutrient Transformation	Low	Little opportunity due to quick pass through of storm flows and very small amount of leafy vegetation.
Flood Flow Desynchronization	Low	Sparse bank vegetation, small watersheds and quick storm water pass through.
Sediment Stabilization	Low	Sparse Bank vegetation, Sparse in-wash vegetation

## Attachment D

<i>Habitat</i>		
Threatened & Endangered	Low	Habitat for the Cactus Ferruginous Pygmy Owl is present but it lacks the primary constituent elements required for foraging, dispersal, reproduction, etc. No habitat for any other T&E species is present.
Wildlife Use	Moderate	Washes provide most of the structural diversity in project area. Washes used for cover and foraging. Washes are in a rural setting with vehicle traffic limited to Highway Noise and occasional off-road vehicle use.
Community	Moderate	A mature though sparse xeroriparian ecosystem in the immediate vicinity of the project. Some weedy and disturbance indicator species
<i>Recreational/Public Use</i>		
Non-Consumptive	None	Some trespass 4-wheel drive, limited access/opportunity
Consumptive	Low	Previously leased for cattle operations

In general, the project area is characterized by relatively flat terrain dissected by dry washes that gently slope toward the Gila River. There is sparse vegetation except in areas adjacent to the Gila River and along natural washes. The project site is located within the Lower Colorado River Valley Subdivision of the Sonoran Desertscrub Biotic Community. The Lower Colorado River Valley Subdivision is the driest of the Sonoran Desertscrub subdivisions (Brown, 1994). The habitat within the project area consists primarily of Desertscrub vegetation, including creosote (*Larrea tridentate*), brittlebush (*Encelia farinosa*), triangle leaf bursage (*Ambrosia deltoidea*), barrel cactus (*Ferocactus wislizenii*), Desert Christmas cactus (*Opuntia leptocaulis*) and a variety of grasses. The habitat within the xeroriparian wash corridors consists mainly of blue paloverde (*Cercidium floridum*), ironwood (*Olneya tesota*), with occasional Saguaro (*Carnegiea gigantea*). This vegetation is typical of ephemeral washes that receive low levels of rainfall and minimal disturbance. Because of the scarcity of water, the washes strongly influence the distribution of vegetation and support dense growth of trees. The mitigation efforts described will be designed to enhance the habitats associated with the ephemeral washes in the project area.

An evaluation of the vegetative impacts as a result of the proposed construction activities is included in the following table:

**Table 2. Directly-Impacted Species**

Common Name	Scientific Name	Permanent Impacted Area Counts
Saguaros	<i>Carnegiea gigantea</i>	3
Blue paloverde	<i>Cercidium floridum</i>	48
Ironwood	<i>Olneya tesota</i>	53

## MITIGATION

### Overview

To compensate for unavoidable permanent impacts to 2.3 acres of JDW, ADOT proposes to provide both on-site mitigation and a transfer of an in-lieu mitigation fee to the Nature Conservancy of Arizona (TNC). This mitigation plan has been prepared to address both unavoidable permanent and temporary impacts to JDW associated with the design and construction of the Lewis Prison T.I.

The total project area is estimated to be 452.9 acres; of that 15.8 acres have been delineated as JDW. These JDW, which represent approximately 3.5% of the total surface area of the site, are composed of ephemeral washes. The ephemeral washes flow in direct response to precipitation events, have channels that are above the groundwater table at all times, and do not support self-sustaining populations of fish (Arizona Administrative Code, Title 18, Chapter 11, Article 1). All ephemeral channels in the project area currently serve as tributaries to the Gila River. The project will not take place in the Gila River itself.

### In-Lieu Mitigation Fee

To compensate for unavoidable permanent impacts to 2.3 acres JDW, ADOT proposes to provide an in-lieu mitigation fee for 3.5 acres. This mitigation would consist of a direct payment to TNC. These funds will be used to acquire, enhance, restore or preserve high-quality habitat associated with their Hassayampa River Preserve. The Hassayampa River Preserve is located on Highway 60, near milepost 114, three miles southeast of the city of Wickenburg in Maricopa County, Arizona. Currently, the Hassayampa River Preserve contains 333 acres of land.

The Hassayampa River Preserve has very similar ephemeral wash habitat to that at the project site. The preserve lands have already been designated as permanent conservation lands, thus protecting them from future development. At a 2:1 ratio, ADOT would need to provide 4.6 acres in compensation for their impacts to 2.3 acres of JDW. They are proposing to build 1.1 acres of new drainage channel on the project site. Subtracting the 1.1 acres of new drainage channels from the needed 4.6 acres leaves 3.5 acres that will need to be compensated through a transfer of in-lieu fees to TNC. 1.1 acres represents

24% of the total mitigation requirement. 3.5 acres represent 76% of the total mitigation requirement.

#### On-Site Mitigation

Plan sheets 9 and 10 of the (see attached project plan sheets) denotes the proposed location of the new drainage channel. Within a 15-foot buffer around the centerline of the new drainage channel, a native seed mixture will be applied by a hydroseed method. This mixture will include trees (ironwood and palo verde), bushes, forbs, and grass seeds (see attached special provisions for the construction specification in Appendix A). Additionally, three saguaros salvaged from the JDW within the project site will be replanted along the banks of this new channel.

The actual size may vary as the project design is completed. Adjustments to size and location are expected to be minor and the area needed for the new channel has been included in the proposed mitigation.

### COMPARATIVE ANALYSIS OF FOR IN-LIEU MITIGATION & HABITAT

#### Overview

The Hassayampa River Preserve plays host to rare desert cottonwood/willow riparian forest, desert fan palms, plus Sonoran Desert species such as saguaro, barrel and cholla cactus, mesquite, palo verde and spring wildflowers. These native plants provide cover, food and detritus for native wildlife. The marshy pond habitat attracts an impressive array of water birds such as the great blue heron, green-backed heron, and pied-billed grebe. 230 species of birds live, nest, and migrate along the Hassayampa riparian corridor. Some of Arizona's very rare raptors perch atop the massive trees and dead snags along the river. The large willows around the lake provide important nesting habitat for the endangered southwestern willow flycatcher. Many species of lizards dart amidst the underbrush and woody debris.

For comparison purposes, the relative values of the existing habitat and the proposed habitat replacement are summarized in Tables 2 and 3, respectively.

**Table 3. Hassayampa River Preserve Functions and Values**

FUNCTION	VALUE	RATIONALE
<i>Water Quality</i>		
Groundwater Recharge/Discharge	Moderate	Fine to coarse substrate, rapid infiltration
Nutrient Transformation	Moderate	Production and retention of detritus
Flood Flow Desynchronization	Moderate	Heavy bank vegetation
Sediment Stabilization	Moderate	Some in-wash vegetation
<i>Habitat</i>		
Threatened & Endangered	High	Moderate Habitat for the Cactus Ferruginous Pygmy Owl and Southwestern Willow Flycatcher.

## Attachment D

Wildlife Use	High	Improved structural diversity, vehicle trespass control, rural character
Community	High	Native-dominated habitat with minimal disturbance
<i>Recreational/Public Use</i>		
Non-Consumptive	Moderate	Interpretive opportunity, improved access/opportunity
Consumptive	None	Conservation area, not appropriate

### MITIGATION GOALS

#### Goal

The goal of the proposed mitigation is two-fold. The on-site mitigation facilitates the growth of native habitat along the banks of the proposed new drainage channel. The in-lieu fee to TNC will facilitate the acquisition, enhancement, restoration or preservation of xeroriparian acreage at the Hassayampa River Preserve.

#### Time Lapse

Seeding of the new drainage channel shall be accomplished as soon as possible after the slopes and those portions of the right-of-way that have been disturbed have been finished in accordance with the requirements of the applicable portions of Section 203 of the ADOT Standard Specifications for Road and Bridge Construction (2000) and no later than 6 months after the cessation of construction activities

Transfer of in-lieu fee will take place in accordance with the conditions of the Section 404 Individual Permit.

#### Rationale for Expecting Implementation Success

The rationale for expecting successful implementation of the proposed mitigation plan is based on ADOT's mission to provide and maintain transportation facilities, as well as preserve Arizona's unique and social environments.

#### Schedule

The Yuma District will implement the mitigation plan in accordance with the conditions of the Section 404 Individual Permit.

#### Suggested Planting Plan

#### *On-site Mitigation*

See attached hydroseeding specifications in Appendix A.

#### Site Preparation

The on-site mitigation site preparations will include appropriate grading to promote growth of new vegetation, grubbing, and removal of all noxious or invasive species.

Irrigation Plan*On-site Mitigation*

Irrigation is not proposed for the on-site mitigation. Hydro seed of the nature proposed, generally germinates within a few days of receiving rainfall and the survival rate depends greatly on the amount of rain that falls throughout the year. Encouraging germination through irrigation could cause massive die-offs when water is withdrawn. Germination in response to the natural rainfall will ensure a constant seed bank source and allow for a gradual return of vegetation that matches in cover and distribution.

**ESTIMATED COST**

Table 4. On-site mitigation costs

On-site activity	Number of acres	X	Cost per acre (\$)	=	Activity cost (\$)
Hydroseed mixture	1.6	X	350	=	560
Application cost	1.6	X	350	=	320
<b>TOTAL ON-SITE COST</b>					<b>880</b>

The sum cost of on-site mitigation activities for 1.6 acres is \$880.

Table 5. In-lieu mitigation fees

Number of acres	X	Average cost per acres (\$)	=	Replacement cost (\$)
3.5	X	5000	=	17,500
<b>TOTAL OFF-SITE COST</b>				<b>17,500</b>

The total cost for the replacement of 3.5 acres would be approximately \$17,500.

**RESPONSIBLE PARTIES**

Establishment, monitoring, and maintenance of the on-site mitigation site will be the responsibility of:

William P. Alfier, PE  
 District Engineer  
 Yuma District  
 Arizona Department of Transportation  
 2243 E. Gila Ridge Road  
 MD Y200  
 Yuma, Arizona 85365-2101  
 Phone (928) 317-2104

The final use of the in-lieu fees, as well as the management of the Hassayampa River Preserve will be the responsibility of:

Attachment D

The Director of Conservation Programs  
The Nature Conservancy, Arizona Chapter  
Tucson Conservation Center  
1510 E. Fort Lowell Road  
Tucson, AZ 85719  
Phone: (520) 622-3861  
Fax: (520) 620-1799

Entranco prepared this mitigation and monitoring plan on behalf of ADOT.

Entranco  
7740 N. 16<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85020  
(602) 889-7000



Jane Dee Hull  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

3033 North Central Avenue • Phoenix, Arizona 85012-2809  
(602) 207-2300 • www.adeq.state.az.us



Jacqueline E. Schafer  
Director

RECEIVED  
JUL - 2 2002  
REGULATORY BRANCH  
PHOENIX FIELD OFFICE

**Applicant:** Arizona Department of Transportation  
Yuma District  
Attn: William P. Alfier, District Engineer  
2243 East Gila Ridge Road (MD Y200)  
Yuma, Arizona 85365

**Agent:** Entranco, Inc.  
Attn: Barbara Wilson  
7740 North 16<sup>th</sup> Street  
Suite 200  
Phoenix, Arizona 85020

**Subject:** Water Quality Certification, State of Arizona for: **The Arizona Department of Transportation, Gila Bend-Buckeye (SR 85) Lewis Prison T.I., (Section 35, T2S, R4W, and Sections 2, 3, 10 and 11, T3S, R4W), Maricopa County, Arizona, U.S. Army Corps of Engineers Public Notice/Application No. 2002-00682-CJL**

Dear Mr. Alfier:

The Arizona Department of Environmental Quality (ADEQ), Water Quality Division has reviewed information on the Arizona Department of Transportation (ADOT) Gila Bend-Buckeye (SR 85) Lewis Prison T.I. project submitted for water quality certification pursuant to Section 401 of the federal Clean Water Act. Section A describes the activities to be certified, the references listed in Section B were used as the basis for certification. The review has determined that when the applicant adheres to Conditions C.1 through C.9 listed in Section C, the certified activities should comply with State surface water quality standards

Subject to the conditions in Section C, this letter certifies that the activities in the Gila Bend-Buckeye (SR 85) project should not have a negative impact upon the chemical, physical or biological integrity of waters of the U.S. (WUS).

## A. DESCRIPTION OF ACTIVITIES TO BE CERTIFIED

- ADOT is proposing a roadway construction project to improve and widen SR85 to a four-lane divided roadway with ramps and frontage roads, between Patterson Road and Lewis Prison Road, from mileposts (MP) 137.0 to 139.5 approximately 20 miles north of Gila Bend, Maricopa County, Arizona (Lewis Prison T.I. Vicinity Map). The purpose of the project is to provide access to Lewis Prison Road, Patterson Road and the juvenile detention facility. The western terminus of Lewis Prison Road will be realigned 250 feet to the south to better align Lewis Prison Road with the new SR 85 roadways. The existing Lewis Prison Road, a large portion of the existing SR 85 roadway and a small portion of Patterson Road

Northern Regional Office  
1515 East Cedar Avenue • Suite F • Flagstaff, AZ 86004  
(520) 779-0313

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

will be demolished. A small portion of the existing SR 85 roadway will be converted into a frontage road linking the new alignment of the Lewis Prison Road with the juvenile detention facility.

2. Activities include the excavation and discharge of fill material for the construction of the roadway, two bridges spanning Lewis Prison Road, ten concrete box culverts, new drainage channels, catch basins and headwalls and the installation of two new pipe culverts and the extension of nine existing pipe culverts. Road construction may include an on-site batch plant for the production of asphaltic concrete. The batch plant will be located a minimum of 100 feet outside jurisdictional waters. The activities will result in the permanent impact 2.3 acres, and the temporary impact of 1.9 acres, of jurisdictional ephemeral WUS.
3. Fill material will consist of native on site soils, rock, asphaltic concrete, metal pipe, concrete and other building materials.
4. ADOT is proposing both on-site mitigation and a transfer of an in-lieu mitigation fee to the Nature Conservancy of Arizona to compensate for unavoidable permanent impacts to 2.3 acres of jurisdiction ephemeral WUS.

**B. BASIS FOR CONDITIONAL STATE 401 WATER QUALITY CERTIFICATION**

1. State of Arizona, Water Quality Standards for Surface Waters, Arizona Administrative Code (A.A.C.) Title 18, Chapter 11, Section 108, Narrative Water Quality Standards, Section 109, Numeric Water Quality Standards, Appendix A. Designated uses include: Aquatic and Wildlife ephemeral (A&We) and Partial Body Contact (PBC) (A.A.C. R18-11-105).
2. ADEQ Water Quality Division Form 404-015 (401 Certification Application), signed April 23, 2002 and received in ADEQ on May 2, 2002 from Mr. William P. Alfier, representing ADOT. Additional documents submitted include, in part the following:
  - a. Applicant's Responses to Arizona Water Quality Policy for Protecting Water Quality During Facility Construction.
  - b. Draft 404(b)(1) Evaluation
  - c. Conceptual Mitigation Plan
  - d. Maps and Design Drawings.

3. U.S. Army Corps of Engineers (ACOE) Public Notice/Application No. 2002-00682-CJL, comment period June 3, 2002 to July 1, 2002, and downloaded from the I. A. District website May 23, 2002.

**C. CONDITIONS FOR STATE 401 WATER QUALITY CERTIFICATION**

This State Water Quality Certification is issued by ADEQ under the authority of Section 401(a) of the federal Clean Water Act (33 U.S.C. §1251 et seq.). The conditions listed below apply to the Section 404 Permit No. 2002-00682-CJL issued by the ACOE. These conditions are enforceable by the U.S. Environmental Protection Agency and ACOE. Civil penalties up to a maximum of \$25,000 per day of violation may be levied if these certification conditions are violated. Criminal penalties may also be levied if a person knowingly violates any provision of the federal Clean Water Act. The following conditions are in addition to the ACOE special conditions for 404 Permit No. 2002-00682-CJL.

**1. General Conditions**

- a. This Certification is only for the activities described in Section A of this Certification for 2.3 acres of permanent impact to jurisdictional ephemeral WUS and is valid for the same period as the ACOE 404 permit. If substantive changes are made in the proposed project or if construction has not been started by the time specified in the ACOE 404 permit, the applicant shall notify as follows:

Arizona Department of Environmental Quality  
Water Quality Division  
Federal Permits and Program Development Unit  
Attention: Surface Water Quality 401 Certification  
File No. 5557, U.S. ACOE PN# 2002-00682-CJL  
3033 North Central Avenue, Phoenix, Arizona 85012

ADEQ will have the option of extending, modifying or denying this Certification.

- b. ADOT shall provide a copy of these State 401 Water Quality Certification Conditions to all appropriate contractors and subcontractors. ADOT shall also post a copy of these conditions in a water-resistant location at the construction site where it may be seen by the workers.

- c. This Certification is void if the construction is not consistent with the activities described in Section A of this Certification.
- d. ADOT is responsible for the construction and maintenance of the project and any adverse cumulative impacts that it may cause.

2. Necessary Permits

ADOT is responsible for obtaining all other permits, certifications and licenses that may be required by federal, state or local authorities. Activities which may require other approvals include, but are not limited to: construction activities disturbing greater than five acres of land [NPDES Stormwater Permit], use of reclaimed wastewater for dust control or irrigation [Reclaimed Water Permit], or dewatering of construction sites to a surface waterbody [NPDES Process Wastewater Permit].

3. Erosion Protection Measures

- a. Erosion control and/or bank protection features (e.g., silt fences, straw bales, rip-rap, or mulching) shall be used, where appropriate, to minimize channel or bank erosion and soil loss. These features shall be maintained, as necessary, during pre-construction and construction periods. Denuded areas shall be revegetated as soon as possible with native plants and seed.
- b. Temporary erosion and sediment control measures shall be installed before construction and pre-operation practices, and shall be maintained as necessary during construction and post-operational periods.
- c. Earthen fill placed in locations subject to scour shall contain not more than ten percent (10%) of particles finer than 0.25 mm diameter (passing a No. 60 sieve, on a dry weight basis).
- d. If construction operations are likely to create an erosion problem, operations shall cease until the problem is resolved or until reasonable control measures have been undertaken.
- e. Upon completion of construction, the work area shall restore or maintain the stability of upstream and downstream segments of washes with respect to erosion and sedimentation.

4. Chemicals and Materials Handling

- a. ADOT shall use designated areas for chemical and petroleum storage, solid waste containment, and equipment washing. These designated areas shall all be located outside of the 100-year floodplain of jurisdiction ephemeral WUS.
- b. ADOT shall have a spill containment plan to ensure that pollutants are contained, removed and properly disposed of. In addition, equipment maintenance shall be performed at an upland site away from WUS.

5. Contaminated Soils and Materials

- a. ADOT is responsible for ensuring construction material and/or fill, placed within the ordinary high water mark (OHWM) of ephemeral jurisdiction WUS is free from substances (including fines that may be associated with rip-rap material) that can cause or contribute to pollution of a surface water.
- b. Debris (such as soil, silt, sand, rubbish, cement, asphalt, oil or petroleum products, organic materials, tires or batteries) derived from construction activities shall not be deposited at any site where it may be washed into WUS and shall be properly disposed of after completion of the work.
- c. If water, other than reclaimed wastewater, is used for dust suppression, it shall not contain contaminants that could violate Surface Water Quality Standards.

6. Runoff

Runoff and seepage from roadways, embankments, and other alterations of the natural environment shall not cause a violation of Surface Water Quality Standards.

7. Conditions Related to Flow

- a. Access roadways, staging areas, equipment pads and material stockpiles shall be designed to allow normal storm flows to pass unimpeded. There shall be no significant alteration of hydraulic conditions of upstream waters as a result of temporary constructed features.

- b. Work shall be performed during low water conditions when the area is naturally dewatered. When there is water flow within the construction area, construction activity shall cease and construction equipment relocated outside the OHWM of WUS.

8. Construction Related Activities

- a. Construction materials, including concrete, asphalt, and piping, shall consist of materials that do not leach pollutants into surface waters. Activities shall be conducted and monitored to ensure that pollution from concrete formation and equipment washing does not drain into WUS.
- b. Discharges from runoff of disturbed soils, cleared vegetative cover, material stockpiles or other alterations of the natural environment shall not cause a discharge which violates State Water Quality Standards.
- c. Silt laden or turbid water resulting from construction activity shall be contained in settling ponds, filtered, flocculated or otherwise treated prior to being discharged into WUS. Treatment systems must be monitored and maintained to ensure proper performance.
- d. Activities shall be conducted and monitored to ensure that pollution from concrete formation and equipment washing does not drain into WUS.
- e. After construction, the work area and all disturbed areas along the bank and streambed shall be restored to an environmentally acceptable condition. All construction residues, equipment and non-native materials shall be removed from and properly disposed of outside the OHWM.
- f. At bridged roadway crossings, only concrete pilings, concrete supporting walls, galvanized steel, plastic or aluminum culverts shall be used in jurisdictional WUS.
- g. All excess excavated material shall be immediately removed to an upland disposal site and jurisdictional WUS shall be restored to its pre-construction contours and elevations following completion of construction of activities.

Mr. William Alfier  
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9. Standard Issues

Any discharge occurring as a result of activities certified for the Gila Bend-Buckeye (S 85) Lewis Prison T.I. project, shall not cause a violation of Surface Water Quality Standards. Applicability of this condition is as defined in A.A.C. R18-11-102.

ADEQ CWA 401 Water Quality Certification of these activities to operate under the terms of the ACOE Individual Permit under the referenced article, does not affect or modify in any way the obligations or liability of any person for any damages, injury, or loss, resulting from an impacted area discharge. The Department may modify or withdraw its determination if the information relied upon is inaccurate or not implemented as proposed. If, in the future, the Department determines that the terms and conditions of the Certification have been violated, or discharges from the activities have caused or contributed a violation to the surface water quality standards, the Director may revoke the Certification. This Certification is not intended to waive any other federal, state or local laws.

Thank you for your cooperation and efforts to protect Arizona's finite and precious water resources.

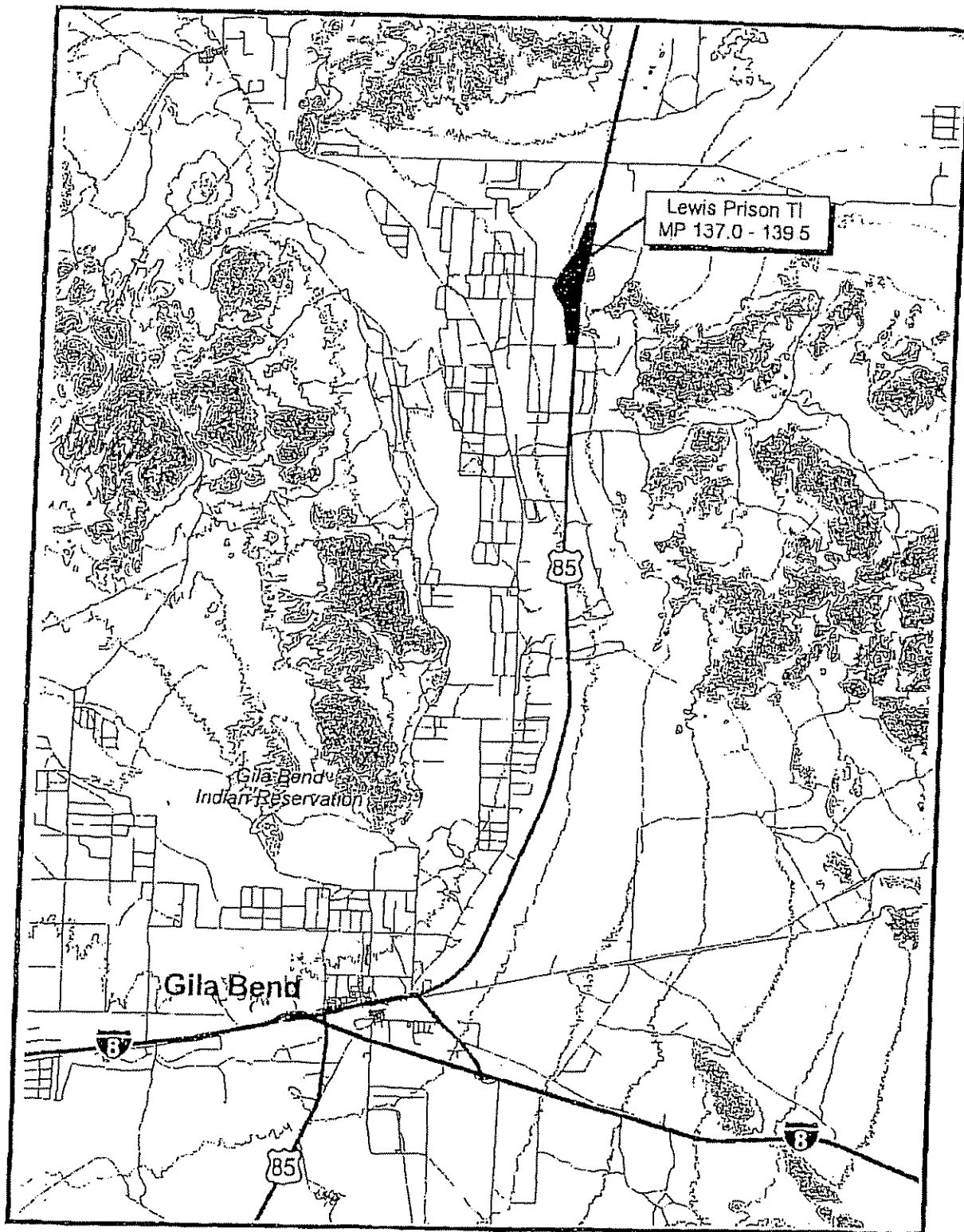
Sincerely,

Authorized ADEQ Signature: Michele Robertson 6-7-02  
Michele Robertson, R.G. Date  
Water Permits Section Manager  
Water Quality Division

Enclosure: Figure 2 Project Location Map (1 page)

cc: Corps of Engineers Regulatory Branch, ATTN: Cindy Lester, 3636 North Central Avenue, Suite 760, Phoenix, Arizona 85012, (RE: 2002-00682-CJL)  
Mr. Tim Vendlinski, Manager, Wetlands Regulatory Office USEPA (WTR-8)

FPPDU02:0240 - 5557



## Lewis Prison TI - Vicinity Map

Project Number : STP-085-B (005)  
 TRACS Number : 085 MA 137 H5955 02C

0.5 0 0.5 1 Miles



Public Notice #2002-00682  
 ADOI, SR 85, Lewis Prison TI  
 Figure 2 of 9